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ABSTRACT

Among the most rapidly progressing issues in American public education is that of contracting with private companies for teaching or administrative services. This booklet neither encourages nor discourages school boards from considering or entering into relationships with private companies for educational services. School districts usually enter into private contracts for educational services when they want to expand options for best serving the district. Contracts can be arranged to include a predetermined set of resources and accountability for predetermined results. The booklet offers information about contracting and reviews critical questions that must be addressed by school boards considering such options as privatization, the growing interest in contracting, the kinds of companies and products involved, factors to consider, evaluation criteria, steps for implementation, and necessary elements of the contract. (Contains 19 references.) (LMI)

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NATIONAL SCHOOL BOARDS ASSOCIATION

GUIDELINES FOR CONTRACTING WITH PRIVATE PROVIDERS FOR EDUCATIONAL SERVICES

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NSBA SERIES ON SCHOOL BOARD GOVERNANCE

FOREWORD

July, 1995

This booklet on school district contracting with private providers for the provision of educational services is the second in a series of NSBA publications that focus on public school governance in the context of a dramatically changing America. The publication had its genesis at the 1995 winter meeting of the Joint Committee¹ of the National School Boards Association (NSBA) and the American Association of School Administrators (AASA).

The Joint Committee felt that a set of guidelines would be a practical helpmeet to school board members and superintendents who wished to explore the feasibility of contracting educational and support services to providers. We believe this booklet accomplishes that goal. It neither encourages nor discourages such relationships but does review the significant issues that must be answered as these alternatives are considered.

This booklet was authored by Professor John M. McLaughlin of St. Cloud State University, St. Cloud, Minnesota. McLaughlin is on the faculty of the Department of Educational Administration and Leadership and is publisher and editor of *The Education Investor*, a monthly newsletter.



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GUIDELINES FOR CONTRACTING WITH PRIVATE PROVIDERS FOR EDUCATIONAL SERVICES

Among the most rapidly progressing issues in American public education is that of contracting with private companies for teaching or administrative services. For decades many school districts have contracted with private companies in areas such as transportation and food services. But in recent years, some school boards have entered into agreements with companies to manage schools or deliver certain components of the curriculum such as foreign languages or Title 1 programming. One urban school board has hired a private company to manage the entire district.

The nature of these developments — especially the pressure on local school boards to find new, innovative ways to engage in educational improvement — is recognized by the National School Boards Association, its federation of state school boards associations, and the American Association of School Administrators. Contracting, as a way of improving the quality and efficiency of public education, is receiving serious attention in Washington, D.C., in many state capitals, and in a growing number of investment firms. This booklet neither encourages nor discourages school boards from considering or entering relationships with private companies for administrative or teaching services. Such decisions can only be reached on a case-by-case basis. What this booklet offers is information about contracting and a review of critical questions that must be addressed by school boards considering such options. It is the need for informed judgments to be made by local school boards and superintendents that these guidelines are intended to address.

WHY CONSIDER PRIVATELY CONTRACTED EDUCATIONAL SERVICES?

School boards are primarily concerned with the best ways to achieve high levels of student performance. Boards regularly face decisions about educational programs within the district. Should we introduce a new foreign language program? Can we expand our gifted and talented program? How can we improve academic performance at Jefferson High? Considering contracting with private companies expands the options boards have as they exercise their leadership to best serve the district.

While it is always possible to redirect district staff and resources, existing contracts, tenure laws, and turf wars can leave boards and superintendents feeling they have little recourse to improve performance, demand accountability, or turn around a failing school. Contracting for privately delivered educational services might be arranged where a company is given a predetermined set of resources and held accountable for predetermined results.

School boards and superintendents have an emerging marketplace in which to shop for educational and administrative services. As this marketplace matures and school systems understand how much power they can wield as purchasers of educational services, boards will have a significant option for creating meaningful improvements in schools.

IS CONTRACTING FOR EDUCATIONAL SERVICES THE SAME THING AS PRIVATIZATION?

Yes, and your district has more than likely been involved in privatization for years. Does your district contract for transportation or food services? Does your district contract for the services of an accountant, an attorney, a rubbish removal company, or athletic coaches?

If so, your district is involved in privatization. Your district is going into the marketplace to hire individuals or companies with special skills or services that help the school system operate - and that's privatization.

But privatization has become a loaded word as companies have begun to offer services in teaching and administrative areas. The word "privatization" has become a "red flag" for many. It creates an image of public schools being sold to private companies.

Rather than refer to the new arrangements between school boards and private companies as privatization, it is more accurate to use the words contracting, or purchasing, or buying educational services. The focus of the action should be on school boards becoming informed purchasers of educational services in the marketplace — contracting, buying, purchasing — not on privatization, a word that creates images of private companies taking over public schools.

At issue is the idea that school districts do not have to produce, with district employees, every service provided within the district. Some of the services the district provides can be purchased in the marketplace. Such contracting for services is not a yielding of power by the school board or an abrogation of its responsibilities. The board retains the power vested in it by state government, remains the legal authority of the school district, and is still responsible to the students, citizens, and state officials for the school district.

Contracting is a tool some school districts may choose to meet special needs or special situations. Purchasing teaching or administrative services in the marketplace or entering into a performance contract is a serious matter. The National School Boards Association and the American Association of School Administrators are committed to an even-handed and informed approach to this crucial issue.

Most school districts provide outstanding and cost effective educational services and may have little fiscal or philosophical interest in contracting for any administrative or teaching services. Some school boards may be looking to contracted services as possible solutions to long standing problems or as the most economical and effective way to provide certain services. Still other boards may be facing pressures to consider such measures. This booklet is designed to assist school boards and superintendents in understanding issues related to contracting for administrative and teaching services and to offer guidance in how relationships might be formed with private companies.

In general, the school board will take action on major contracts after consulting with and receiving the recommendation of the superintendent or a designee. The board cannot approve every agreement with every outside contractor in a larger school district. The board depends on district staff to make good decisions, within policy or budget, on numerous agreements to provide specific services. In fact, many recommendations for consideration of contracted services originate from superintendents or other staff members. Without such delegated authority, school systems would grind to a virtual halt.

WHY ALL THE INTEREST IN CONTRACTING?

In recent years a number of companies have been established to work with public school districts to enhance the quality and effectiveness of their services. Some of these companies have entered into highly visible relationships with school districts that continue to get the scrutiny of many interest groups as well as the business and popular press. Along with these newly formed businesses, other more long standing companies have developed new products or reoriented themselves to offer teaching or administrative services to public schools.

In addition, more and more former teachers and other educators are creating their own educational private practices. These enterprising individuals offer their services directly to parents and students and/or perform contract work for school districts. Compared to the larger corporate providers of educational services, private practitioners offer a "small business" approach to solving education problems.

There are many reasons offered for the development of these companies: a private sector response to the educational reform movement; an outgrowth of the public-private partnerships created between public schools and private companies; a reflection of the social and political climate in America; a focus on rebuilding the country's infrastructure; and a result of the rapid pace of technological developments. Whatever the reasons for the increase in private company involvement in education, it is here and is touted by its true believers as the salvation of public schooling and by its most ardent opponents as public enemy number one.

WHAT KINDS OF COMPANIES AND PRODUCTS ARE INVOLVED?

The companies and products can generally be placed in one of three groups — systemic changers, niche operators, or high tech providers. The systemic changers strive to improve the performance of a school, several schools, or an entire school district. Some systemic changers rely on business oriented management strategies, some have their own proprietary curriculums, and some have alliances with other companies to provide specific services for the schools.

Niche operators generally specialize in one aspect of the curriculum or a specific aspect of management. Some niche companies provide foreign language instruction while others focus on science and mathematics or some other discipline. Niche companies that work with the administration of the school usually focus on a support service such as financial management, accounting, planning, or human resource development.

High tech providers work with school districts to bridge the gap between teaching and technology. The mission of these companies is to teach technology, not content, to students and teachers. Some alliances have been formed between school districts and high tech providers to bring the district up to speed on using technology to enhance the delivery of the curriculum.

SHOULD MY DISTRICT CONSIDER CONTRACTING FOR EDUCATIONAL SERVICES?

Whether a school system considers purchasing administration and teaching services can only be decided on a case-by-case basis. Board members know their school district and community and the issues they face in the ongoing challenges of improving schools. However, if a school system does consider purchasing such services, there are many things to take into account.

WHAT FACTORS SHOULD BE TAKEN INTO ACCOUNT IN CONSIDERING CONTRACTING FOR ADMINISTRATIVE OR TEACHING SERVICES?

There are many factors to consider in evaluating whether to approach contracting for teaching or administrative services. A starting point is an analysis of the needs of the district related to the specific area in which contracting is being considered. Are the needs being met under the present arrangements? If not, why? Is there a problem finding certified staff? Is there a performance issue? What are the reasons that raise the question of whether contracting will better meet the needs of the district? What is the district looking for through contracting — accountability? increased productivity? cost reductions? Can such expectations be met through contracting? Is the idea of contracting a knee-jerk reaction to a problem or has it been motivated by a salesperson's pitch or comments at a recent conference? If so, a more reasoned approach may need to be applied.

A second level of factors to be considered relates to the authority to contract with private providers of teaching or administrative services. Does the school board have the power to enter into such agreements? Recent studies addressing the authority of local boards to contract for teaching or administrative services indicate that there is considerable variation among states on this matter. Some states

grant broad powers while others grant enumerated powers or authority only for specific instructional programs.

The third level of factors revolve around obligations to current employees and the expectations of the community. How will current staff members be affected? Will purchasing educational services conflict with existing contracts? What is the expected response of the community?

A STATE-BY-STATE ANALYSIS

States that grant school boards "broad" powers*

Alaska, California, Colorado, Delaware, Georgia, Indiana, Maryland, Minnesota, Missouri, Montana, New Hampshire, New Mexico, Ohio, Oregon, Utah, Vermont, and Washington

States that grant school boards "enumerated" powers*

Arizona, Arkansas, Connecticut, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Mississippi, Nebraska, Nevada, New York, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Virginia, West Virginia, and Wisconsin.

States that give school boards specific statutory authority to contract for instruction generally**

Colorado, Georgia, Iowa, Maryland, Minnesota, Oregon, Utah, Vermont.

States that permit school boards to contract for specific instructional programs**

Arizona, California, Delaware, Indiana, Kansas, Michigan, Nebraska, New Mexico, North Carolina, Ohio, Pennsylvania, Rhode Island, Washington, West Virginia, Wisconsin.

Note: States and associations not listed did not respond to the survey. Readers should not rely on survey data but should consult expert legal counsel as to the authority and powers of school boards in their state.—S.B.

* Survey of state school boards associations by the Wisconsin Association of School Boards, 1994

** Survey of state departments of education by the American Association of Educators in Private Practice, 1994

ARE THERE CRITERIA THAT WILL HELP WITH THIS DECISION?

A study recently completed on contracted services in Texas offers seven sets of evaluative questions to be considered in making such decisions. The study's authors state clearly that the questions are easier to answer when considering relatively straightforward services like maintenance or transportation and more difficult to answer when considering complex services like teaching or administration.

These criteria for evaluation are:

EFFICIENCY CRITERIA

Can the good or service be more efficiently provided by the school district, by a private firm, or through an interdistrict agreement?

Will contracting increase or decrease the flexibility of the district?

COST ANALYSIS CRITERIA

Is the cost of contracting less than providing the goods or services in-house?

What will the affect of contracting be on other district services?

Has the cost analysis included:

The legal cost to prepare the contract?

Administrative costs to conduct the bid process, evaluate bids and award contracts?

The costs of monitoring contracts?

The costs of recovery if contracting fails or the firm withdraws?

Does the district have the technical experts and administrative personnel to oversee the contract?

PERFORMANCE CRITERIA

Is the good or service measurable?

Can specific performance goals and standards be developed?

Can the district be assured of getting the same or higher levels of service?

Can criteria to assess performance with specific reporting mechanisms be developed?

What procedures will be used to monitor the contractor's performance?

EQUITY CRITERIA

Is there a sufficient supply of firms to provide competition?

Will minority individuals or minority-owned businesses have equal access to the bidding process?

CONTRACTOR EVALUATION CRITERIA

What is the contractor's experience and reputation?

Is corruption possible or likely?

Are the means of service delivery important, or can the contractor be left to choose the cheapest methods?

What are the penalties for failure to meet performance standards?

What is the financial condition of the contractor?

FUTURE OPTIONS CRITERIA

Can unsatisfactory contractors be replaced?

Is there a reasonable opportunity to exit a service delivery domain?

Is excess dependence on a particular provider going to create future problems?

Would service interruption be catastrophic?

POLITICAL REALITIES CRITERIA?

Is contracting legal under state, local, and federal laws?

Are there political barriers to contracting?

Will the school board support the change to contracting?

Does the service delivery system promote citizen input and control?

Does the service delivery system afford citizens avenues for redress of grievances?

In addition to answering the above questions, a report should be developed to address issues which may be more difficult to measure. The report should consider such areas as staff morale, parental support, and community acceptance. The report should not only include information which provides an impact statement on these constituencies related to contracting for educational services, but it should also provide data on faculty, parent, and community perspectives that will help shape a contract with a company should the school board take the next steps.

AFTER ADDRESSING ALL THE ABOVE, IF A SCHOOL DISTRICT STILL WISHES TO CONSIDER CONTRACTING FOR A TEACHING OR ADMINISTRATIVE SERVICE, WHAT'S NEXT?

This is a good time to remember the adage, "Make haste slowly". There is a significant amount of work ahead. A foundation of open processes and policies with high integrity must be laid to give a contracted service the greatest likelihood of providing the district with the improvements it seeks.

Hold a series of open forums to listen to the community and allow the various groups within the community to address one another. Emphasize all the work that has been done to assess the question of contracting for educational services and the steps that have led to the open forum. Make clear that the board has not yet decided whether it will contract with a private company, and that the results of the

open forum will help the board in considering whether to go to the next step in contracting - the Request For Proposals process.

A Request For Proposals (RFP) is the foundation to an open and competitive selection process. It is, as its name suggests, a request for potential contractors to respond to the needs of the district by submitting a proposal addressing the criteria sought by the board. Generally, notice of an RFP is placed in a regional newspaper and in widely read education publications. The notice briefly states the services sought, the timetable, and the address and phone number of the district from which the RFP document can be obtained. It is the RFP document that drives the shape of the proposals that will be submitted and gives the board and superintendent the opportunity to capture the information they must have to make a decision as to whether to contract for educational services and to compare the various companies' plans. RFPs will vary with the different services sought, but in general they should include the following.

An introduction should provide an overview of the services sought and from what type of companies the district will consider proposals - non-profit companies, for-profit companies, district employees, experienced companies, newly formed companies. A description of the school district and the specific sites for which services are sought should be provided. Among the information offered should be the enrollment in the district, number of buildings, per pupil expenditures, number of employees, a community profile, and any other data or public relations materials which are pertinent.

A detailed description of the building or space or any equipment that will be provided by the district or which must be provided by the company should be included. Attach building outlines, city maps, equipment specifications or any other information that will give the companies what they need to make a thorough proposal.

The length of the contract should be addressed. Generally, the larger the scope of the contract the longer the contract period should be. Be specific about whether there will be an option by the board to renew the contract. Discuss termination. Can the contract be terminated without cause? Can it be terminated with cause? Detail the length of notice in terms of days required to terminate the contract.

Describe the scope of services sought, the expectations of the board, and the quality which must be provided. Be specific about ways the company's performance will be measured. What criteria will be used? If baseline data are to be used to measure the performance of the company, describe that data and tell how it was collected. If baseline data are needed but not available, specify that such baseline data will be obtained by a third party. Elaborate on the chain of command and how the company will fit in. To whom will the company report?

Clearly address the submission specifics. Specify a submission deadline. Six to eight weeks prior to the deadline hold a mandatory pre-submission meeting for all potential companies. At that meeting give the companies' representatives a tour of the district and the buildings where the services sought will be performed. Review the RFP and provide an opportunity for questions and answers. Treat all the companies equally.

Be specific about the form and content of the proposals. Require that all but newly formed companies submit documentation of prior experience. Set up a format that will allow the board or the evaluation team to compare various proposals. Describe the review process. Who will review the proposals and make recommendations to the board? Will an outside consultant be used to recommend finalists? Provide a realistic timetable under which the board expects to make decisions regarding the proposals.

State that finalists in the RFP process will make formal presentations to the school board or other appropriate body and will be expected to participate in community meetings on their services. Be clear that the board or its designee will perform a due diligence examination of each of the finalists and that

the finalists should be prepared to provide or allow background checks, financial disclosures, references, licenses, and other qualifying information.

WHAT SHOULD BE INCLUDED IN THE CONTRACT?

A contract should be drafted or reviewed by the school district's attorney and should specify many of the points noted in the RFP such as the length of the contract, performance standards and measurement techniques, consequences for failure to meet specified standards, and termination procedures. In addition, terms for payment should be included. How will the company be paid? Will there be front end payments, ongoing monthly payments, payment upon satisfactory completion? Such decisions can only be worked out on a case-by-case basis and will vary greatly with the scope and length of the services sought.

When drafting the contract, listen to the company. Do not let a predetermined mindset exclude possible options. Provide an opportunity for the company to state what it will do, how it will tie compensation to its performance, and what standards it can meet. Remember that school systems and their school boards still hold all the power, but give and take in the process of contract formulation will likely lead to better results.

WHAT ELSE SHOULD BE CONSIDERED?

Always check state and local regulations and rely on the school district's attorney for guidance in unclear areas. A district might consider issuing a RFQ — Request for Qualification — before entering into an RFP process. The RFQ process qualifies potential companies as serious bidders for the district's contract. It puts the due diligence activities up front so the RFP may proceed more smoothly and quickly.

There are a number of other things school boards and superintendents may choose to do to become more acquainted with contracting for services. First, school district representatives might wish to meet with city or county officials who regularly use the contracting process to provide services in their areas of responsibility. The board may wish to ask the superintendent to present an array of options which include contracting whenever the board's authorization is sought for a new educational program. The board might consider receiving training, along with top administrators, in the contracting process. The board should secure contracting for educational services as a managerial right in its agreements with current employees. And finally, before entering a contract, the board and superintendent should play through some worst case scenarios and make sure the school district attorney understands and prepares a contract that considers the possible pitfalls foreseen. Make certain there are no hidden costs involved and there is no likelihood of the company's board of directors attempting to call the shots within the district.

In addition, when conditions allow, districts might consider contracting with multiple companies that will compete with one another. Rather than contracting with a single company, which can be seen as competing with district delivered services, contracting with multiple companies can be another way for the district to receive maximum benefit from competition.

What has been provided is merely a framework to be considered and possibly adjusted to meet the specifics of the situation. In considering contracting for administrative or teaching services, no two circumstances will be exactly alike. Whether a district should consider purchasing teaching or administrative services is a very serious question which can only be answered after thorough analysis and community input. Should contracted services be sought, it is incumbent on school boards to enter into agreements that are a credit to the district, its citizens, and most of all, its students.

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about NSBA...

The National School Boards Association is the nationwide advocacy organization for public school governance. NSBA's mission is to foster excellence and equity in public elementary and secondary education in the United States through local school board leadership. NSBA achieves its mission by amplifying the influence of school boards across the country in all public forums relevant to federal and national education issues, by representing the school board perspective before federal government agencies and with national organizations that affect education, and by providing vital information and services to Federation Members and school boards throughout the nation.

NSBA advocates local school boards as the ultimate expression of the unique American institution of representative governance of public school districts. NSBA supports the capacity of each school board — acting on behalf of and in close concert with the people of its community — to envision the future of education in its community, to establish a structure and environment that allow all students to reach their maximum potential, to provide accountability for the people of its community on performance in the schools, and to serve as the key community advocate for children and youth and their public schools.

Founded in 1940, NSBA is a not-for-profit federation of state associations of school boards across the United States and the school boards of the District of Columbia, Guam, Hawaii, Puerto Rico, and the U.S. Virgin Islands. NSBA represents the nation's 95,000 school board members. These board members govern 15,025 local school districts that serve more than 40 million public school students — approximately 90 percent of all elementary and secondary school students in the nation. Virtually all school board members are elected; the remainder are appointed by elected officials.

NSBA policy is determined by a 150-member Delegate Assembly of local school board members from throughout the nation. The 24-member Board of Directors translates this policy into action. Programs and services are administered by the NSBA Executive Director, assisted by a professional staff. NSBA is located in metropolitan Washington, D.C.

NSBA's Mission Statement

The mission of the National School Boards Association, working with and through all its Federation Members, is to foster excellence and equity in public education through school board leadership.

NSBA's Vision for Public Education

The National School Boards Association believes local school boards are the nation's preeminent expression of grass roots democracy and that this form of governance of the public schools is fundamental to the continued success of public education. Adequately funded, student-centered public schools will provide, in a safe and supportive environment, a comprehensive education for the whole child and will prepare all of America's children for a lifetime of learning in a diverse, democratic society and an interdependent global economy. America's school boards, by creating a vision of excellence and equity for every child, will provide performance-oriented schools that meet today's problems as well as the challenges of tomorrow.



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